

# Exhibit 380

*United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.*  
*v. Dey, Inc., et al.*, Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support  
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

IN THE COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR  
LEON COUNTY, FLORIDA

THE STATE OF FLORIDA )  
ex. rel. )  
VEN-A-CARE OF THE FLORIDA )  
KEYS, INC., a Florida Corporation, )  
By and through its principal officers )  
And directors, ZACHARY T. )  
BENTLEY and T. MARK JONES, )  
Plaintiffs, )

VS. )

CIVIL ACTION NO. 98-3032A

BOEHRINGER INGELHEIM )  
Corporation; DEY, INC.; DEY, L.P.; EMD )  
PHARMACEUTICALS, INC.; LIPHA, )  
S.A.; MERCK KGaA; MERCK-LIPHA, )  
S.A.; SCHERING Corporation; SCHERING )  
-PLOUGH CORPORATION; ROXANE )  
LABORATORIES, INC.; and WARRICK )  
PHARMACEUTICALS Corporation, )  
Defendants. )

VIDEOTAPED DEPOSITION OF

**TODD CHRISTOPHER GALLES**

March 1, 2006

VOLUME 2

**ORIGINAL**

**FREDERICKS-CARROLL REPORTING & LITIGATION SERVICES, INC.**

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1 A. Yes.

2 Q. (BY MR. ANDERSON) And was -- was it your  
3 understanding that Mr. Robertson and others had -- in  
4 the sales force had come up with the idea of the  
5 reimbursement comparison worksheet to help them sell  
6 Dey unit-dose product? 10:35

7 MS. GIULIANA: Objection to the form.

8 A. Yes.

9 Q. (BY MR. ANDERSON) And that was based on  
10 their interactions and feedback from their customers  
11 out in the field, correct? 10:35

12 MS. GIULIANA: Objection to the form.

13 MR. McDONALD: Objection, leading.

14 A. I'm not really sure, you know, what it was  
15 based on. I'm sure it was based on many things, but  
16 definitely their work in the field. 10:35

17 Q. (BY MR. ANDERSON) With customers?

18 A. With customers.

19 Q. All right. Do you remember roughly when it  
20 was that you first created the reimbursement  
21 comparison worksheet? 10:35

22 MS. GIULIANA: Objection to the form.

23 A. I remember creating it. It was probably  
24 after one of the national sales meetings. I think  
25 sales had presented some information on it. And then 10:36

1 I was assigned to work with Steve to come up with a  
2 workable format and create a tool for the sales force  
3 to use.

4 Q. (BY MR. ANDERSON) If you could, look at  
5 what's been marked as Exhibit 37. 10:36

6 MS. GIULIANA: Do you have any copies of  
7 that, Jarrett?

8 MR. ANDERSON: I don't.

9 A. Oh, it's in that one?

10 MR. ANDERSON: For the record, Exhibit 10:37  
11 37 is Bates labeled DL-TX-0170961 consecutively  
12 through 0170972.

13 A. (Witness reviewing document). Okay. Well,  
14 I'm pretty familiar with this, but since it's so long,  
15 I might have to refer back to this depending on your 10:40  
16 questions.

17 Q. (BY MR. ANDERSON) Oh, that's fine. That's  
18 fine. Do you recognize the first page of Exhibit 37?

19 A. Yes.

20 Q. And was this a document that you signed in 10:40  
21 the ordinary course of business at Dey Labs?

22 A. Yes. I signed it into draft copy review and  
23 then I signed it after final copy at -- during the  
24 final copy approval.

25 Q. And you're referencing there your signature 10:40

1 MS. GIULIANA: Objection to the form.  
2 Asked and answered.

3 MR. ANDERSON: I'll rephrase.

4 Q. (BY MR. ANDERSON) Did you request any  
5 attorney at Kelley, Drye & Warren to represent you? 12:39

6 MS. GIULIANA: Objection to the form,  
7 asked and answered.

8 A. Yes.

9 Q. (BY MR. ANDERSON) And did you do that before  
10 you were informed that they would be representing you? 12:39

11 MS. GIULIANA: Objection to the form,  
12 asked and answered.

13 A. No.

14 Q. (BY MR. ANDERSON) All right. Now let's go  
15 back to the Exhibit 37 that we were talking about 12:39  
16 before the break. And specifically that page DL-TX --  
17 you may already be there, Mr. Galles. The one with  
18 your handwriting on it across the -- running  
19 diagonally. Are you?

20 A. 971? 12:39

21 Q. Yes. Page DL --

22 A. Yes.

23 Q. -- TX-170971. Now, you do remember that  
24 Mr. Mozak told you to no longer use this reimbursement  
25 comparison worksheet, right? 12:40

1 MS. GIULIANA: Objection to the form.

2 A. Well, this -- seeing this refreshed my  
3 memory, yes.

4 Q. (BY MR. ANDERSON) And he wasn't just  
5 directing that to you personally, but he was saying,  
6 look, Dey Labs will no longer be using the  
7 reimbursement comparison worksheet, correct? 12:40

8 MS. GIULIANA: Objection to the form.

9 A. I would interpret it that way.

10 Q. (BY MR. ANDERSON) And before the break you 12:40  
11 testified that you understood the reason that he was  
12 saying that Dey would no longer utilize the  
13 reimbursement comparison worksheet was because, in  
14 your words, there were sensitivities with the  
15 government, correct? 12:40

16 MS. GIULIANA: Objection to the form.  
17 Mischaracterizes his testimony.

18 A. I'm not sure at what point in time I had that  
19 context given to this. And only kind of through this  
20 procedure did I see that this is in '99, so it filled 12:41  
21 in a piece of the puzzle for me, so...

22 Q. (BY MR. ANDERSON) Did you review any part of  
23 Exhibit 37 with Ms. Giuliani before your deposition?

24 MS. GIULIANA: Objection to the form.

25 A. Yes. 12:41

1 A. Yeah.

2 Q. Okay. Did you create Exhibit 461, which is  
3 titled "Reimbursement Comparison Worksheet"?

4 A. Yes.

5 Q. Did you create a reimbursement comparison  
6 worksheet for any of Dey's other generic drugs?

7 A. No.

8 Q. Did you create a reimbursement comparison  
9 worksheet for Dey's Albuterol MDI product?

10 A. No.

11 Q. Did you create a reimbursement comparison  
12 worksheet for Dey's generic Albuterol syrup?

13 A. No.

14 Q. Did you create a reimbursement comparison  
15 worksheet for Dey's generic Ipratropium product?

16 A. No.

17 Q. Did you create a reimbursement comparison  
18 worksheet for Dey's generic cromolyn product?

19 A. No.

20 Q. Did you create a reimbursement comparison  
21 worksheet for Dey's generic Acetylcysteine product?

22 A. No.

23 Q. Did you create a reimbursement comparison  
24 worksheet for Dey's generic Metaproterenol product?

25 A. No.

1 Q. Did you create a reimbursement comparison  
2 worksheet for Dey's sodium chloride product?

3 A. No.

4 Q. When you -- when you created Exhibit 461,  
5 which is titled "Reimbursement Comparison Worksheet,"  
6 did you think you were doing anything wrong?

01:57

7 MR. ANDERSON: Objection, form.  
8 Objection, leading.

9 A. No.

10 Q. (BY MS. GIULIANA) At some point in time did  
11 you meet with attorneys from the Texas attorney  
12 general's office?

01:57

13 A. Yes.

14 Q. Did the attorneys from the Texas attorney  
15 general's office show you Exhibit 461 during any of  
16 your meetings?

01:57

17 A. Yes.

18 Q. Did the attorneys from the Texas attorney  
19 general's office tell you that you did anything wrong  
20 in creating Exhibit 461?

01:58

21 A. No.

22 Q. During any point -- strike that.

23 At any point during your meetings with  
24 the attorneys from the Texas attorney general's office  
25 did they advise you that you should consult a lawyer

01:58



1 with respect to any of the conducts -- with respect --  
2 let me start over again.

3 At any point during your meetings with  
4 attorneys from the Texas attorney general's office did  
5 they advise you that you should consult a lawyer with  
6 respect to any of your conduct while employed at Dey?

01:58

7 A. No.

8 Q. Did you ever go on sales visits to customers  
9 with Dey sales representatives?

10 A. Yes.

01:59

11 Q. Did you ever use Exhibit 461 with a customer?

12 A. No.

13 MR. ANDERSON: Objection, form.

14 Q. (BY MS. GIULIANA) Did you ever see a Dey  
15 salesperson use Exhibit 461 with a customer?

01:59

16 MR. ANDERSON: Objection, form.

17 A. No.

18 Q. (BY MS. GIULIANA) Did you ever use a  
19 reimbursement comparison worksheet with a customer?

20 A. No.

01:59

21 Q. Did you ever see a Dey salesperson use a  
22 reimbursement comparison worksheet with a customer?

23 A. No.

24 Q. On any of the customer visits that you went  
25 on with Dey sales representatives did you ever see a

01:59

1 reimbursement comparison worksheet presented to a  
2 customer?

3 A. No.

4 Q. Okay. And if you could just look at the  
5 worksheet, please. Does this worksheet, and that's  
6 Exhibit 461, does Exhibit 461 compare the  
7 reimbursement that a customer would receive if it  
8 dispensed Dey's unit-dose Albuterol as compared to a  
9 competitor's unit-dose Albuterol?

10 A. It compares Dey unit-dose to Albuterol --  
11 Albuterol multi-dose bottles.

12 Q. Okay. So it doesn't compare Dey unit-dose  
13 to -- does it -- strike that.

14 Does it compare a Dey unit-dose  
15 Albuterol product to a competitor's unit-dose  
16 Albuterol product?

17 A. No.

18 Q. Do you think that there's anything wrong with  
19 salespeople comparing the spreads of different  
20 products?

21 MR. ANDERSON: Objection, leading.

22 A. No.

23 Q. (BY MS. GIULIANA) In what customer -- now  
24 you can put that exhibit aside. I'm just going to ask  
25 you some questions without reference to any documents.